

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X

MIMY MENDER,

Plaintiff,

- against -

BURGER KINGS INCORPORATED, et al.,

Defendants.

-----X

**REPORT AND  
RECOMMENDATION**

08-CV-2868 (ERK) (JO)

**JAMES ORENSTEIN, Magistrate Judge:**

Plaintiff Mimy Menger ("Menger") filed a Complaint in this action on February 8, 2010. Docket Entry ("DE") 1. The Complaint named six defendants: Burger King Incorporated ("BKI," named in the Complaint as "Burger Kings Incorporated"), Coastal Group Management Corp ("Coastal"), Michael Coogan ("Coogan"), New York City ("City"), and two New York City Police Department Officers identified only as "Jhon [sic] Doe 1 and 2" (collectively with the City, the "City Defendants"). The court dismissed all claims against the City Defendants on July 1, 2009. DE 38. Coogan was served with the Summons and Complaint, *see* DE 37, but never answered; and it appears that Coastal has never been served. Following the disbarment of his counsel, DE 39, Menger, proceeding *pro se*, ultimately settled with BKI, and the court endorsed the stipulation of dismissal between those parties on August 4, 2010. DE 42 (the "Dismissal Order").

By its terms, the Dismissal Order terminated the action against BKI and all pending counterclaims and cross-claims. *Id.* However, it did not terminate Menger's claims against Coastal and Coogan. Nevertheless, it is my understanding that plaintiff Menger contemplated that his settlement with BKI would resolve the entire action, including any claim against defendants Coastal and Coogan, and that the case would therefore be closed. I therefore

respectfully recommend that the court dismiss the action against those defendants with prejudice. To the extent Menger expected to proceed against either of those defendants, he may of course make that clear in objecting to my recommendation.

I respectfully direct the Clerk to mail a copy of this Report and Recommendation to the plaintiff. If Mr. Menger objects to my recommendation, he must do so in writing and mail his objection to the Clerk of the Court, Eastern District of New York, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201 no later than September 3, 2010. Failure to file objections within this period designating the particular issues to be reviewed waives the right to appeal the district court's order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010).

**SO ORDERED.**

Dated: Brooklyn, New York  
August 13, 2010

/s/ James Orenstein  
JAMES ORENSTEIN  
U.S. Magistrate Judge